

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Darla K. Truman, George O. Ackerson,  
and William J. Foreman,  
Warren County, Iowa**

ADMINISTRATIVE ORDER

NO. 2011-SW- 20

To: Darla K. Truman  
6923 Illinois Street  
Indianola, Iowa 50125

William J. Foreman  
6753 Illinois Street  
Indianola, Iowa 50125

George O. Ackerson  
1002 Norwood Drive  
Norwalk, Iowa 50211

**I. SUMMARY**

This order requires you to remove and properly dispose of all solid waste located at the site described below in this order, and to pay a penalty of \$3,000.00, subject to your appeal rights stated in this order. Issuance of this order rescinds Administrative Order No. 2011-SW-05 issued to Darla K. Truman on March 2, 2011; and Administrative Order No. 2011-SW-06 issued to George O. Ackerson on March 2, 2011.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Bill Gross  
Iowa Department of Natural Resources  
Field Office No. 5  
401 SW 7<sup>th</sup> Street, Suite 1  
Des Moines, Iowa 50309  
Phone: 515/725-0721

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322 Phone:  
515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: DARLA K. TRUMAN, GEORGE O. ACKERSON, AND WILLIAM J.  
FOREMAN

**II. JURISDICTION**

This order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. On May 7, 2009, DNR received an anonymous complaint about a waste disposal site in a ravine behind a house located at 6753 Illinois Street in Warren County, Iowa (the site). On May 14, 2009, Bill Gross of DNR Field Office No. 5 visited the site and confirmed the existence of an open dump. The site is a rural residence property located west of Indianola, Iowa. Mr. Gross found miscellaneous waste materials in an overgrown wooded ravine northeast of the house on the property. The waste materials dumped at the site included household waste, boards, fencing, appliances and tires. Mr. Gross also observed orange water, possibly tainted with iron oxide from the solid waste, draining from the site through the ravine. Mr. Gross took photographs to document the violations.

2. The current owner of the site is William J. Foreman of 6753 Illinois Street, Indianola, Iowa 50125. Mr. Foreman purchased the site on November 30, 2010, from George O. Ackerson of 1002 Norwood Drive in Norwalk, Iowa 50211. Mr. Ackerson purchased the site on August 14, 2007, from Darla K. Truman of 6923 Illinois Street, Indianola, Iowa. At the time of the sale, Ms. Truman signed a Groundwater Hazard Statement stating that there was no known solid waste disposal site existing on the property. However, Ms. Truman has admitted to DNR in letters dated June 11, 2009; October 29, 2009; and June 9, 2010, that solid waste was present on the property prior to the sale of the property.

3. On June 2, 2009, Mr. Gross talked to Mr. Ackerson by phone. Mr. Ackerson explained that the previous owner, Darla K. Truman, had signed a Real Estate Transfer Groundwater Hazard Statement that there was no known solid waste disposal on the site and no hazardous waste on the site. Mr. Ackerman faxed copies of the Groundwater Hazard Statement and Warranty Deed to Mr. Gross.

4. DNR sent a June 9, 2009, Notice of Violation letter to both Mr. Ackerson and Ms. Truman, requiring proper disposal of the solid waste located at the site by July 31, 2009. The letter required the submittal of disposal receipts to DNR, and that Mr. Gross be notified when the cleanup was completed.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: DARLA K. TRUMAN, GEORGE O. ACKERSON, AND WILLIAM J.  
FOREMAN

5. On June 11, 2009, Mr. Gross received a handwritten note dated June 9, 2009, from Ms. Truman, stating that Mr. Ackerman was aware of the open dumped materials at the time of the sale of the site. Ms. Truman stated in her June 9 note that she offered to clean up the property, but Mr. Ackerson informed her that he would do it. She stated that she did not feel responsible to clean up the site.

6. On October 5, 2009, Mr. Gross re-visited the site and found that no cleanup had occurred. Mr. Gross also observed that orange water continued to drain from the disposal site into the ravine. He documented the continuing violations with photographs. An October 6, 2009, Notice of Violation letter was sent to Mr. Ackerman and Ms. Truman, stating that Mr. Gross had re-visited the site and found that open dumped material was still present and the orange liquid still flowing from the disposal site. Mr. Gross extended the cleanup deadline to November 15, 2009. The Notice of Violation letter was sent by certified mail to both Mr. Ackerman and Ms. Truman. However, Ms. Truman did not claim the certified letter, so the letter was sent to her by regular mail on October 26, 2009.

7. On November 3, 2009, Mr. Gross received an October 29, 2009, handwritten note from Ms. Truman, again stating that prior to the sale she offered to clean up the site, but that Mr. Ackerman had stated that he would do it. Ms. Truman again stated that she does not feel responsible to clean up the site.

8. On April 16, 2010, Mr. Gross visited the site again and found that no cleanup had occurred and that the conditions at the site remained the same. Mr. Gross again took photographs of the site. A June 2, 2010, Notice of Violation letter was sent to both Mr. Ackerson and Ms. Truman, requiring proper disposal of the solid waste located at the site.

9. On June 11, 2010, Mr. Gross received a handwritten note dated June 9, 2010, from Ms. Truman, again stating that she offered to clean up the site prior to the sale to Mr. Ackerson, but that Mr. Ackerson had stated that he would clean up the site. She also reiterated that she does not feel responsible for cleanup of the site.

10. On March 2, 2011, individual orders regarding this incident were issued to Darla K. Truman and George O. Ackerson. Ms. Truman wrote a letter to DNR repeating information that she had been led by Mr. Ackerson to believe that upon the sale of the property Mr. Ackerson would "take care of" any issues with the property. Mr. Ackerson contacted DNR by telephone and stated that he had sold the property to William J. Foreman.

11. On May 4, 2011, Mr. Gross revisited the site and found it unchanged from his previous visits. He found that debris remained in the ravine and that orange-colored water was flowing from it. He took photographs of the debris at the site.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
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FOREMAN

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

2. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above-described facts demonstrate non-compliance with these provisions.

3. Iowa Code section 558.69 requires the reporting of disposal sites and hazardous waste materials with each declaration of value submitted to a county recorder upon the conveyance of real property on forms prescribed by the DNR. However, the DNR does not approve or disapprove of property statements based on these transfers. Iowa Code section 558.69 specifically provides that the owner of the property is responsible for the accuracy of the information submitted on the form, and that the provisions of that section do not limit liability which may be imposed under a contract or under any other law.

**V. ORDER**

THEREFORE, DNR orders Darla K. Truman, George O. Ackerson, and William J. Foreman to do the following:

1. By no later than July 15, 2011, remove all solid waste from the site located at 6753 Illinois Street in Warren County, Iowa (the site), and provide DNR Field Office No. 5 with landfill or recycling receipts as proof of proper disposal;

2. Immediately halt improper illegal open dumping of waste materials at any location in the State of Iowa and specifically at the site, and comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning;

3. Within 90 days of the date of this order, pay a penalty of \$3,000.00; and

4. If all solid waste is removed from the site by July 15, 2011, then the administrative penalty in the amount of \$3,000.00 may be waived if DNR determines the site is cleaned up following inspection.

IOWA DEPARTMENT OF NATURAL RESOURCES  
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**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed. The penalty shall be paid according to the penalty payment chart set out above. The administrative penalty is determined as follows:

Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty of \$3,000.00.

The administrative penalty is as follows:

Economic Benefit – Darla K. Truman, George O. Ackerson, and William J. Foreman have achieved an economic benefit from improper waste disposal and from failure to clean up the disposal site. They have saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Proper disposal of the solid wastes dumped at the site would have required payment of landfill tipping fees and transportation costs. The estimated cost to clean up the site and properly dispose of the waste at a landfill is estimated to be as follows: ten hours of labor at \$20.00 per hour, for a total of \$200.00; two hours of transportation costs to haul the waste to the local landfill near Winterset, at \$50.00 per hour for a total of \$100.00; and approximately two tons of materials to be disposed of at the landfill, with landfill fees of \$50.00 per ton for a total of \$100. Based on these considerations, \$400.00 is assessed for this factor.

Gravity of the Violation – Compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Since June 2009, DNR has observed orange water leaching from the solid waste at the site into a ravine. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – **Darla K. Truman** has been specifically aware of the open dumping site since prior to the sale of the site to George O. Ackerman in August 2007. Further, she has been specifically aware of the need to clean up the site

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
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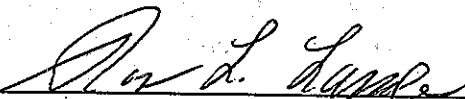
since DNR's first Notice of Violation letter sent to her in June 2009. Ms. Truman claims that Mr. Ackerman was aware of the open dumped material at the site at the time of the August 2007 sale of the site, and that Mr. Ackerman declined her offer at the time to clean up the site. At the time of the sale, Ms. Truman signed a Groundwater Hazard Statement stating that there was no known solid waste disposal on the site. However, Ms. Truman has admitted to DNR in letters dated June 11, 2009; October 29, 2009; and June 9, 2010, that this solid waste was present on the property prior to the sale of the property. **George O. Ackerson** has been specifically aware of the open dumping site since he purchased the site in August 2007. Further, he has been specifically aware of the need to clean up the site since DNR's first Notice of Violation letter sent to him in June 2009. Mr. Ackerson claims that Ms. Truman misled him that there was no solid waste dumped onto the property, yet he allegedly was aware of the open dumped materials at the time of the sale when he informed Ms. Truman that he would perform the cleanup. **William J. Foreman** now owns property where an open dump exists, and he has not cleaned up the property. Mr. Foreman owned the site on May 4, 2011, when DNR again documented illegal open dumping at the site. Therefore, \$1,600.00 is assessed for this factor.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.

  
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Roger L. Lande, Director  
Iowa Department of Natural Resources

Dated this 30th day of  
June, 2011.

Warren County Solid Waste file; Anne Preziosi; DNR Field Office 5; VI.C